

LAW OFFICES
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2413

HENRY GOLDBERG
JOSEPH A. GODLES
JONATHAN L. WIENER
BRITA D. STRANDBERG
LAURA A. STEFANI

(202) 429-4900
TELECOPIER:
(202) 429-4912
e-mail:
general@g2w2.com
website: www.g2w2.com

HENRIETTA WRIGHT
THOMAS G. GHERARDI, P.C.
COUNSEL

October 15, 2004

Marlene Dortch
Secretary
Federal Communications Commission
The Portals Building
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: IB Docket Nos. 02-234 & 96-261

Dear Ms. Dortch:

The Philippines Long Distance Telephone Company ("PLDT") hereby responds to Access International's ("Access") September 23, 2004 letter opposing elimination of the ISP on the U.S. - Philippines route. In that letter, Access makes unsupported and irrelevant accusations that are beyond the scope of this proceeding and the purview of the Commission, disregarding the Commission's determination that lifting the ISP will serve the public interest. Because Access raises no reasonable concerns regarding competition on the U.S. - Philippines route, the Commission should immediately lift the ISP on that route.

1. Background.

On March 10, 2003, the International Bureau issued an Order responding to AT&T and MCI requests for relief from termination rate increases proposed by various Philippine carriers, including PLDT.¹ In that Order, the Bureau specified the

¹ AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief; Petition of WorldCom, Inc. for Prevention of "Whipsawing" on the U.S.-Philippines Route, Order, 18 FCC Rcd 3519 (IB 2003).

application of the Commission's International Settlements Policy ("ISP") for traffic terminated on the U.S.- Philippines route.²

Access subsequently sought "enforcement" of that Order, asking the Commission to direct all U.S. carriers terminating traffic to the Philippines to make publicly available the accounting rates and settlement rates in effect between U.S. carriers and PLDT, and to direct PLDT to terminate traffic originated by Access at those settlement rates.³ The Commission, on review of the Bureau's Order, rejected Access's request, explaining that AT&T and MCI were not required to file interim agreements under the ISP, and directing Access to use the procedures highlighted in the Commission's *2004 ISP Reform Order* to raise any reasonable competitive concerns about the U.S.-Philippine route.⁴

In that *Order*, the Commission provided an opportunity to comment on its proposal to remove the ISP on routes, including the U.S. - Philippines route, believed to be benchmark-compliant, directing interested parties to file comments raising "reasonable concerns" about those routes.⁵ The Commission also outlined competitive safeguards available to U.S. carriers and consumers seeking to challenge allegedly anticompetitive conduct on routes no longer governed by the ISP.⁶

The comments filed by Access in response to the *2004 ISP Reform Order* fell woefully short of the standard required therein to justify maintaining the ISP on the U.S.-Philippine route. Access merely speculated that rates on the U.S.-Philippines route might be above benchmark and made vague and unsubstantiated claims of discriminatory and anticompetitive behavior.⁷ Access did not support these claims with

² *Id.* at 3536-37.

³ *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief; Petition of WorldCom, Inc. for Prevention of "Whipsawing" on the U.S.-Philippines Route, Petition for Enforcement of March 10, 2003 Order* (filed Mar. 12, 2004).

⁴ *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief; Petition of WorldCom, Inc. for Prevention of "Whipsawing" on the U.S.-Philippines Route, Order on Review*, 19 FCC Rcd 9993, 9995 n.9 (2004) ("Order on Review").

⁵ *International Settlements Policy Reform; International Settlement Rates, First Report and Order*, 19 FCC Rcd 5709, 5724 (2004) ("2004 ISP Order").

⁶ *Id.* at 5729-34.

⁷ *International Settlements Policy Reform; International Settlement Rates, Comments of International Access Inc. d/b/a Access International*, IB Docket Nos. 02-324 & 96-261 (filed June 28, 2004); *see also International Settlements Policy Reform; International Settlement Rates, Reply Comments of PLDT*, IB Docket Nos. 02-324 & 96-261 (filed July 13, 2004) (explaining that Access's comments do not raise reasonable concerns about the U.S. - Philippines route).

“an affidavit and relevant commercial agreements,” and thus also failed to satisfy the requirements of the competitive safeguards adopted in the Commission’s 2004 *ISP Reform Order*.⁸

By public notice dated August 31, 2004, the Bureau directed U.S. carriers to certify that the current rate on the U.S. – Philippines route (and other routes for which the Commission’s rates on file have expired) is benchmark-compliant.⁹ Three major U.S. carriers have since certified that the U.S. – Philippines route is benchmark compliant,¹⁰ while Access again protested the Commission’s plan to eliminate the ISP on the U.S. – Philippines route. No other carrier opposed elimination of the ISP. Access’s conduct seems to be aimed at using the Commission’s processes as a means to apply commercial pressure to PLDT.

2. Lifting the ISP on the U.S. – Philippines Route Is in the Public Interest.

In its Order on Review, which addressed the U.S. – Philippines route in particular, the Commission explained that the ISP can “inhibit U.S. carrier flexibility in arriving at agreements” and that “[t]he public interest is generally served where parties are free to negotiate commercial arrangements.¹¹” In the 2004 *ISP Order*, the Commission likewise concluded that lifting the ISP “will eliminate . . . inefficiencies that thwart our ultimate goal of promoting competition . . . and unnecessarily delay the benefits to U.S. customers of market-based arrangements.”¹² These clear public interest findings favor lifting of the ISP, and nothing in Access’s filings provides a basis for concluding that the public interest would be served by leaving the ISP in place. Access has again raised false and irrelevant claims in an attempt to prevent the Commission from lifting the ISP from the U.S. – Philippines route.

⁸ 2004 *ISP Order* at 5762 (Final Rule 64.1002(d)).

⁹ *Commission Lifts the International Settlements Policy on Certain-Benchmark Compliant Routes, Seeks Further Comment on Other Routes*, Public Notice, IB Docket Nos. 02-324 & 96-261, DA 04-2832 (rel. Aug. 31, 2004).

¹⁰ Letter from James J.R. Talbot, Senior Attorney, AT&T to Marlene Dortch, Secretary, Federal Communications Commission (Sept. 24, 2004); Letter from David A. Nall, General Attorney, Sprint, to Marlene Dortch, Secretary, Federal Communications Commission (Sept. 28, 2004); *International Settlements Policy Reform; International Settlement Rates*, Comments of MCI, Inc., IB Docket Nos. 02-324 & 96-261 (filed Sept. 29, 2004).

¹¹ Order on Review at 10003.

¹² 2004 *ISP Order* at 5724.

3. Rates on the U.S. – Philippines Route are Below Benchmark.

The three major U.S. carriers have certified that¹³ termination rates on the U.S – Philippines route are below benchmark. Indeed, in its most recent filing, Access itself now appears to concede that rates are well below the applicable benchmark.¹⁴

4. Access's Charges of Anticompetitive Behavior Are Both False and Not Cognizable Under the Commission's Precedents.

The fact that rates are below benchmark -- the most relevant criterion under the Commission's Order for lifting of the ISP -- has not deterred Access from trying to use this proceeding as a forum to make false and irrelevant charges against PLDT in an effort to leverage a favorable commercial arrangement for itself. Access claims that PLDT's U.S. affiliate, PLDT (US), is "selling retail services to consumers at prices below ... current settlement rate"¹⁵ even though: (1) it acknowledges that it does not know what settlement rate is in place, and (2) the retail rate that it claims PLDT(US) is charging -- \$.13.7 -- obviously exceeds the \$0.12 per minute settlement rate that Access speculates is in place. Although its own "facts" indicate that PLDT (US) is selling retail services at prices above current settlement rates, Access asserts that PLDT(US) receives less than \$.12 cents per minute, alleging that PLDT(US) pays a 30 percent commission on its calling cards, which results in PLDT's receiving no more than \$0.0959 per minute.

Access's argument is factually incorrect and deficient as a matter of law. To the extent it relies on the rate from PLDT(US)'s Web site, that rate is for "ePhone Card" service, which involves minutes that end users purchase directly from PLDT(US) on the Internet. For ePhone Card service, there is no third party vendor to whom PLDT(US) might pay a commission. Accordingly, it is irrelevant whether PLDT(US) pays commission on other calls and Access's deduction of 30 percent from the ePhone Card rate of \$0.137 per minute, to arrive at an allegedly "below-benchmark" rate, is erroneous.

Even if Access's calculations had been based on rates for other PLDT(US) phone cards that might be subject to commissions, such as the PLDT(US) phone cards sold by Seafood City that also are mentioned in Access's letter, Access is admittedly speculating

¹³ See *supra* n.10.

¹⁴ Letter from Mitchell F. Brecher, *Counsel for International Access, Inc., D/B/A Access International*, to Marlene Dortch, Secretary, Federal Communications Commission (Sept. 23, 2004), at 2.

¹⁵ *Id.*

about settlement rates and commissions paid by PLDT(US).¹⁶ Whether and how much PLDT(US) pays in commissions on its phone cards is irrelevant. Under the Commission's precedents, all that is required is that the retail rate for PLDT(US)'s international calling card be above the settlement rate -- as it is even if one accepts all of Access's speculative assumptions. The Commission does not regulate the terms of a carrier's relationship with its agents.¹⁷

Access's assertion that PLDT is engaging in anticompetitive conduct in the Philippines, likewise is beyond the scope of the Commission's regulation, as it concerns matters occurring entirely within the Philippines,¹⁸ outside the Commission's territorial jurisdiction.

Even if Access's claims were cognizable by the Commission, they are unfounded. PLDT's allegedly discriminatory conduct is a product of domestic Philippines telecommunications regulation, not anti-competitive conduct by PLDT. By Access's own admission, it intended to use the Philippine toll-free access (1-800) number "to originate calls from the Philippines."¹⁹ Under Philippines law and regulation, only International Gateway Facility (IGF) licensed operators are authorized to originate international calls from the Philippines. PLDT offered Access alternative and lawful arrangements, comparable to arrangements it has offered other carriers, but Access declined this offer. Access's failure to avail itself of commercial arrangements PLDT has made available to other U.S. carriers demonstrates, again, that Access's filings are not directed at ensuring competition on the U.S. - Philippines route, but at trying to use this proceeding to leverage for commercial advantage unrelated to the issues being considered in this proceeding.

¹⁶ PLDT believes the motive behind this speculation is to try to goad PLDT to disclose proprietary information such as PLDT(US)'s commission structure or profit margin for Access's commercial advantage.

¹⁷ *Metro Communications, Inc. v. Ameritech Mobile Communications, Inc.*, Memorandum Opinion & Order, 12 FCC Rcd 13083, 13090-91 (WTB 1996).

¹⁸ See, e.g., *AT&T Corporation Country Direct Service Agreement with Telecomunicaciones Internacionales de Argentina Telintar, S.A.*, Memorandum Opinion & Order, 11 FCC Rcd 13893, 13894-5 (IB 1996) ("[M]atters that occur within Argentina . . . are outside our territorial jurisdiction."); see also *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999) (explaining basis for Commission authority to regulate settlement rates is jurisdiction over domestic, not foreign, carriers).

¹⁹ Letter from Mitchell F. Brecher, *Counsel for International Access, Inc.*, D/B/A Access International, to Marlene Dortch, Secretary, Federal Communications Commission (Sept. 23, 2004), at 3.

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Access, again, has failed to raise any reasonable concern about competition on the U.S. - Philippines route. Moreover, multiple carriers have certified that rates on this route are below benchmark, the Commission should lift the ISP on the U.S. - Philippines route without further delay.

Respectfully submitted,

A handwritten signature in black ink that reads "Henry Goldberg". The signature is written in a cursive, slightly slanted style.

Henry Goldberg
Jonathan Wiener
Brita D. Strandberg

Attorneys for Philippine Long Distance
Telephone Company

Of counsel:

Margaret K. Pfeiffer
Thomas R. Leuba

Sullivan & Cromwell LLP
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 956-7500

cc: Mr. Donald Abelson
Mr. James Ball
Ms. Alexandra Field
Ms. Kimberly Cook
James J. R. Talbot, Esq.
Robert J. Aamoth, Esq.
Gary Epstein, Esq.
Gregory C. Staple, Esq.
David A. Nall, Esq.
Scott Shefferman, Esq.
Mitchell F. Brecher, Esq.